

26/1962

Appeal No. 8 of 1961

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT OF THE
FEDERATION OF MALAYA

(IN THE COURT OF APPEAL AT KUALA LUMPUR)

B E T W E E N :-

JEROME FRANCIS

Appellant
(Plaintiff)

- and -

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
30 MAR 1963
25 RUSSELL SQUARE
LONDON, W.C.1.

THE MUNICIPAL COUNCILLORS
OF KUALA LUMPUR

Respondents
(Defendants)

68219 CASE FOR THE APPELLANT

Record

1. This is an appeal from the Judgments and Order of the Court of Appeal, the Supreme Court of the Federation of Malaya, dated the 30th day of May, 1960, allowing the Appellant's appeal from the Judgment and Order of the trial Court given on the 14th day of December, 1959.

pp.38-61

pp.27-34

2. The case arises out of the purported dismissal of the Appellant from his employment on the clerical staff in the Town Superintendent's Department of the Municipality of Kuala Lumpur.

3. The facts which were not in any serious dispute are set out in the Judgment of Thomson C.J. in the Court of Appeal as follows :-

"On 1st July, 1950, the Appellant was engaged as some sort of a clerk in the Town Superintendent's Department of the Council on a month to month basis at a salary of \$108 a month and on 1st June, 1953, he was placed on the permanent staff of the Council at a salary of \$126 a month which by July, 1957, had been increased to \$276 a month.

p.38. p.12.
p.41. 1 34.

"In June, 1957, an incident occurred in connection with the cashing of certain cheques by the

Appellant. It would appear that it was the practice of the Council to permit their employees, subject to certain restrictions, to exchange their personal cheques for cash at the Municipal Treasury. In pursuance of this arrangement on 19th June, 1957, the Appellant cashed two cheques each for \$300 and the following day he cashed a third cheque for \$500. Although there would seem to have been some sort of misunderstanding as to the \$500 cheque which was in fact met on presentation it is admitted that neither of the \$300 cheques was met on presentation because there were not the necessary funds in the Appellant's bank account.

"On 21st June the Municipal Treasurer addressed a letter to the Appellant the material portions of which read as follows :-

'My attention has been drawn to the fact that on the 19th June 1957 you have cashed two cheques bearing Nos. 38947 and 38949 on Chung Kiaw Bank Ltd. for \$300/- each on the 20th June another cheque for \$500/- on the same Bank and you have assured that there were sufficient funds to meet these amounts on the cheques issued by you. However on presentation of the cheques they were dishonoured due to the fact that there were no funds. It is clear therefore that you cashed these cheques knowing full well that there were no funds to meet the cheques.

2. You are hereby demanded to pay cash to these three cheques immediately failing which you will be liable for disciplinary action and report will be made to the President Municipal Council for immediate action.'

"As has been said the statement in this letter as to the \$500/- cheque was not accurate but the statement as to the \$300 cheques was true and the day after the letter was written the Appellant effected payment of them in cash.

"This incident of the cheques was reported to the President of the Council and on 25th June the Town Superintendent, who was the Appellant's superior, addressed a letter to him stating that he was directed by the President to suspend him from duty.

(3)

"Though admittedly he received it the Appellant did not reply to his letter of suspension but on 27th June he addressed a letter to the Municipal Treasurer which was stated to be a reply to that functionary's letter of 21st June. In it he pointed out that the allegation as to the \$500 cheque was untrue. With regard to the \$300 cheques he gave an explanation to which he has adhered throughout. It was to the effect that on 18th June he gave \$700 in cash and a bank deposit slip to his brother who happened to be in Kuala Lumpur on a visit from Johore Bahru and asked him to bank the money for him. His brother did not bank the money and left for Malacca. He was unaware of this when he drew the cheques. He drew them on the assumption that his brother had paid the money into the bank and he pointed out that if the money had in fact been paid into the bank the cheques would have been met. There was therefore no question of dishonesty. He went on to point out that on 22nd June he had paid the Treasurer \$600 in cash in respect of the cheques.

"On 18th July the Establishment Committee of the Council appointed a Sub-Committee 'to enquire into the misconduct of Mr. Jerome Francis of the Town Superintendent's Department' and certain other matters which do not affect the present case. The President of the Council was not a member of that Sub-Committee.

"The Sub-Committee was appointed to meet on 15th August and the Appellant was informed of this. The date of the meeting, however, was subsequently altered to 19th August and a notice of this change of date was sent to the Appellant who said, however, that he did not receive it until the afternoon of 19th August when it was too late to be present at the meeting. The Sub-Committee considered the matter in his absence though it is clear that they had before them his letter of 27th June. They came to the conclusion that there had been considerable laxity and indeed breach of the Council's regulations on the part of the officers who had cashed the cheques for him. They considered that there was 'doubt as to whether he had any intention to defraud'. They looked at his Annual Confidential Reports and thought he was a 'rather very unsatisfactory

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employee' and they recommended that a full report should be obtained on his work and his usefulness to the Council. As regards the incident of the cheques, however, they made no recommendation as to disciplinary action and recommended that his suspension should cease and that he should be reinstated in his office.

"On 18th September the Establishment Committee of the Council of which the President was a member considered the report of the Sub-Committee relating to the Appellant. Their 'decision', from which one member dissented, was :-

'The Committee accepted the recommendations of the Sub-Committee of Enquiry. In view of the adverse reports on Mr. J. Francis work, the Committee decided to terminate his service from 30th September 1957.'

"That decision of the Establishment Committee was confirmed by the Council itself and on 1st October, 1957, the following letter was addressed to the Appellant by the Municipal Treasurer :-

'In connection with your suspension from duty I have been directed to inform you that the Establishment Committee has decided to terminate your services with effect from 30th September, 1957 on the grounds of adverse reports against your work and conduct and the Committee's decision has been confirmed by the full Council meeting held on 30.9.57.'

"The Appellant then took legal advice and on 14th October his Solicitor addressed a letter to the Council asking for further particulars, protesting at the way in which his client had been treated and concluding that the termination of his client's service was bad in law and unless his client was reinstated forthwith legal proceedings would be taken.

"On 28th October the President of the Council replied to this letter stating that he did not consider that the termination of the Appellant's service was bad in law and that there could be no question of his reinstatement. The material portions of this letter read as follows :-

'2. The removal of Mr. Jerome Francis from his office with effect from the 30th of September was in accordance with my decision, in addition to the decision of the Establishment Committee and of the Municipal Council, whose concurrence was in fact unnecessary at law.

3. Municipal officers in the category of Mr. Francis are appointed and removed by me at pleasure, and the proceedings of the Committee and Sub-Committee to which you refer are irrelevant, though I in no way agree that they went outside their powers in considering the matters which they did.'

"On the same day the President wrote the following letter to Mr. Francis himself :-

'With reference to letter dated 1st October (Ref: KLM. (C) 73 (37) addressed to you and signed by the Acting Municipal Treasurer, I have the honour to inform you that I confirm your removal from your office of Municipal clerk with effect from 30th September 1957, and that I had so decided.'"

4. By Section 16(5) of the Municipal Ordinance.

"The President may appoint such persons as he thinks fit to the office on the list so approved as aforesaid and may remove such persons from office and appoint others in their stead, provided that the appointment and removal of persons to or from an office carrying a commencing salary of two hundred dollars a month and over shall be subject to the approval of the Councillors."

5. By his Statement of Pleint the Appellant alleged that the Establishment Committee proceeded unlawfully to terminate his employment with effect from the 30th day of September, 1957, contrary to good faith natural justice or equity and without any fair hearing and against the terms of employment; and, further alleged, in the alternative, that if the Appellant was dismissed, which was denied, by the President of the Municipal Council, whether on the basis of the Establishment Committee's decision or otherwise then the President was acting contrary

p.p. 1-4

to the principles of natural justice, was biased and was wrong in law.

6. The Appellant prayed :-

p 4. pp.16-44

"1. For a declaration that the decision of the Establishment Committee of the Municipal Council is ultra vires and/or null and void.

"2. For a declaration that the act of the President Municipal Council Kuala Lumpur in terminating at his pleasure the Plaintiff's services is contrary to the principles of natural justice and is void.

"2. (A) For a declaration that the termination of the Plaintiff was wrongful and void and that the Plaintiff has the right to continue his employment with the Defendants as from the 1st day of October, 1957.

"2. (B) Or alternatively that the Defendants do pay general damages for wrongful dismissal and in lieu of reasonable notice of termination of service.

"3. For an order for balance of half pay from the 25th of June, 1957 to the 30th of September, 1957.

"4. For further or other relief as to the Court seems fit and proper.

"5. And for costs in this suit."

pp. 11-13

7. The Respondents denied that there had been any breach of natural justice and in particular denied that the Establishment Committee proceeded to terminate the Appellant's employment with effect from the 30th day of September, 1957 as alleged or at all. They averred that the President was the Chairman of the meeting of the Establishment Committee held on the 18th day of September, 1957 and in his capacity as President decided to terminate the Appellant's services with effect from the 30th day of September, 1957; that this decision was in fact approved by the Establishment Committee on the 18th day of September, 1957 and by the Municipal Council at their meeting on the 30th day of September, 1957, although such approval was in no way necessary to the valid determination of the Appellant's services by the President, and

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that the President was acting in accordance with the powers conferred upon him by Section 16(5) of the Municipal Ordinance.

8. At the trial the President, Arthur Desmond York gave evidence as follows :-

"I am President, Municipal Council, Kuala Lumpur. Also President in 1957.

p.21 p.16-
p.22. p.33

"I remember report to me of an employee whose cheque was dishonoured by the bank. It was Plaintiff.

"First of all, as it appeared a serious matter, I ordered first his suspension and then a report of the matter to the Police.

"There was in a normal course probably a report of the matter to the Establishment Committee. The suspension was approved by the Establishment Committee on 26.6.57 at a meeting held on that date.

"I considered that what Plaintiff did was sufficient to merit a dismissal.

"Usual procedure was, after I formed my opinion that the person should be dismissed, the grounds together with my opinion would be put before the Establishment Committee.

"The concurrence of the Establishment Committee as a matter of law is not essential in a matter of appointment or dismissal of staff drawing under §200 p.m. As regards Plaintiff, I did make a recommendation for his dismissal.

"A sub-committee was appointed to consider the matter.

"That sub-committee made its report - it is Appendix "B" dated 19.8.57.

"There was a subsequent meeting of the Establishment Committee on 18.9.57 when I made a recommendation in that I retained the opinion I previously held. The matter was put to the vote.

"From minutes of meeting of 18.9.57 the Committee not only considered the report of

the sub-committee but also the work and conduct of the Plaintiff. Its decision was confirmed by the full council on 30.9.57.

"CROSS-EXAMINED:

"In my capacity as President the only communication by me to the Plaintiff was in Ex.P.7 dated 28.10.57.

"Till that date I did not dismiss the Plaintiff.

"As far as I am concerned it was Council's decision that Plaintiff be dismissed. It never rested with me, but with the Establishment Committee and the full council.

"As to suspension, I made the order.

"RE-EXAMINED:

"If my decision was not approved of by the Establishment Committee I should waive my decision.

"To Court: In the K.L. Municipality we have very similar rules and regulations relating to staff discipline, dismissal etc.

"They are contained in standing orders."

9. In his judgment the Learned Judge held :-

p.30 l.43
p.31 l.17

"On the evidence it is clear that the matter of the unpaid cheques was brought immediately to the notice of the President, on whose instructions Plaintiff was suspended on June 25. He was cognisant of the complaint when he presided at the Establishment Committee meeting which decided on the dismissal, and he again presided at the full Council Meeting approving the decision of the Committee. The minutes of these meetings showed that he and the Councillors present came to one and the same decision. I am therefore of opinion that, even if the letter of the Acting Municipal Treasurer dated October 1, 1957 could have been more appropriately worded in strict compliance with the provisions of Section 16(5), no amount of hair-splitting can alter the fact that the President decided, as the other Councillors did, to dismiss the Plaintiff.

For this reason I hold that the purported dismissal in fact was a dismissal by the President with the concurrence and approval of the Municipal Councillors, although such approval was not necessary under Section 16(5), as Plaintiff's commencing salary was under \$200 a month. No question of ultra vires therefore arises."

The learned Judge further held that the word "remove" in Section 16(5) of the Municipal Ordinance means "remove at pleasure" and therefore the Appellant's claim failed.

10. The Appellant appealed to the Court of Appeal in which all three Judges upheld the decision of Ong, J. that the word "remove" meant remove at pleasure and that this power could be exercised without cause, notice or hearing, but by a majority (Hill, J.A. and Good, J.A. Thomson, C. J. dissenting) held that the power of removal had not been exercised by the President and therefore the appeal should be allowed.

11. Hill, J.A. in his judgment held :-

"In my view the Appellant should have succeeded in some measure in the lower Court as his dismissal was not in accordance with Section 16(5).

p.54 11.15-28

"I would allow the appeal by giving the Appellant the first declaration he prays for that the decision of the Establishment Committee of the Municipal Council is ultra vires and/or null and void."

"As the Appellant had no vested right to his employment and as his services could have been legally terminated by the President at any time during the past two years or so, I consider that three months' pay and allowances would adequately compensate him and would so order."

12. Good, J.A. in his judgment held :-

"In the present case, the President, on his own admission, undoubtedly considered himself bound by the decision of the Establishment Committee as confirmed by the Municipal Council. In effect, the President was acting

p.60 11.29-46

under the directions of a majority of the Council, and the decision to remove the Appellant was not his decision (even though it may have coincided with his opinion) but the decision of the Council. As such, it was ultra vires and accordingly the removal of the Appellant constituted wrongful dismissal.

"For these reasons I would allow the appeal.

"I agree with Hill, J.A. as to the quantum of damages: I would allow three months' salary and allowances at the rate applicable to the Appellant in September, 1957. I would also award him the costs of this appeal and of the proceedings in the High Court."

p.61 13. It was therefore ordered that the judgment of the trial Court given on the 14th day of December 1959 be set aside and that the Respondents pay to the Appellant damages equal to three times the amount of the Appellant's monthly emoluments as on the 30th day of September, 1957.

p.62 14. Final leave to appeal to His Majesty the Yang di-Pertuan Agong was granted on the 30th day of May, 1960.

15. It is humbly submitted by the Appellant that his purported dismissal having been found to be ultra vires he was and is still employed by the Respondents and was entitled to a declaration to that effect.

p.61 16. The Appellant humbly submits that this appeal should be allowed and that that portion of the order of the Court of Appeal of the Federation of Malaya dated the 30th day of May, 1960, whereby it was ordered that the Respondents do pay to the Appellant damages equal to three times the amount of the Appellant's monthly emoluments as on the 30th day of September, 1957 be set aside and a declaration substituted that the termination of the employment of the Appellant was wrongful and void and that the Appellant has the right to continue his employment with the Respondents as from the 1st day of October 1957 or in the alternative if, which is not admitted, this is a case of wrongful dismissal the said award of three times the monthly emolument should be increased, and that he should be granted the costs of this appeal for the following among other

R E A S O N S

1. BECAUSE the purported dismissal of the Appellant being ultra vires was null and void and the Appellant is still employed by the Respondents.
2. BECAUSE the Appellant is entitled to the declaration for which he prayed.
3. BECAUSE the power of removal conferred on the president of the Municipal Council by Section 16(5) of the Municipal Ordinance is only exercisable according to natural justice and in particular the rule of audi alteram partem must be observed.
4. BECAUSE in the purported dismissal of the Appellant the principles of natural justice were not allowed.
5. BECAUSE if, which is not admitted, the Appellant was dismissed the dismissal was wrongful and the award of three months emoluments was inadequate.

Thomas O. Kellock

Appeal No. 8 of 1961

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COURT OF THE FEDERATION OF
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(IN THE COURT OF APPEAL AT
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JEROME FRANCIS

- v -

THE MUNICIPAL COUNCILLORS
OF KUALA LUMPUR.

CASE FOR THE APPELLANT

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Appellant's Solicitors.